

CONSTRUCTION MANAGER AT RISK CONTRACT

THIS AGREEMENT is entered into this 7 day of June, 2010 (the "Effective Date"), by and between the **CITY OF NEWPORT BEACH**, a Municipal Corporation (the "City") and **C.W. DRIVER, INC.**, a California Corporation ("Construction Manager" or "CM"), whose address is 15615 Alton Parkway, Suite 150, Irvine CA 92618, and is made with reference to the following:

RECITALS

- A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City ("Charter").
- B. The City and the CM entered into a contract dated January 13, 2009, as subsequently amended (the "PM Contract"), for program management services related to the City Hall and Park Master Plan Project.
- C. The City desires to engage the CM to perform construction management services in connection with Newport Beach Civic Center and Park ("Project").
- D. The CM possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.

NOW, THEREFORE, the City and the CM, in consideration of their mutual covenants herein, agree as follows:

ARTICLE 1 DEFINITIONS; CONTRACT COMPONENTS; PROJECT SCOPE

1.1 Definitions

"Agreement" shall have the meaning set forth in Section 1.2.

"Allowance Item(s)" shall mean the item(s) identified as such in Exhibit A.

"Basic Services" shall have the meaning set forth in Section 2.1.

"Charter" shall have the meaning set forth in Recital A.

"City" shall mean the City of Newport Beach.

"City Council" shall mean the Newport Beach City Council.

"Construction Manager" or "CM" shall mean C.W. Driver, Inc.

"Contingency" shall mean the line item contingency, in the amount set forth in Exhibit A, for the contingencies that arise during the course of construction of a project of this size and scope.

"Contractor" shall have the meaning set forth in Section 2.3.7.

"Contract Documents" shall have the meaning set forth in Section 1.2.

"Cost of the Project" shall have the meaning set forth in Section 6.1.11.

"Designer" means Bohlin, Cywinski, Jackson, a Pennsylvania Corporation.

"Direct Expenses" means the items set forth in Section 6.2.2.

"Effective Date" shall have the meaning set forth in the opening paragraph of the Agreement.

"Fee for Basic Services" shall mean the fee for the Basic Services set forth in Section 6.2.1.

"CM Fee of 3.25%" means the fee paid to the CM that is 3.25% of the Cost of the Project, the Basic Services and the Direct Expenses.

"GMP Change Order" shall have the meaning set forth in Section 6.1.9.

"Guaranteed Maximum Price" or **"GMP"** shall have the meaning set forth in Section 6.1.1, as may be amended pursuant to Section 6.1.9.

"Master Schedule" shall mean the schedule prepared pursuant to Section 2.3.1.

"PM Contract" shall have the meaning set forth in Recital B.

"Project" shall have the meaning set forth in Recital C and Section 1.3 of the Agreement. The term Project shall include the total construction of which the Work may be a whole or part of the Project.

"State" shall mean the State of California.

"Uncommitted Funds" shall have the meaning set forth in Section 6.1.7.

"Work" means the construction and related services to be performed by the CM as provided for in this Agreement.

1.2 Contract Documents

The complete contract for the Project includes the following documents: this Agreement ("Agreement"), the Guaranteed Maximum Price Documentation, the Designation of Bid Packages, the Non-Collusion Affidavit, the Designation of Sureties, the Construction Manager's Industrial Safety Record, the Performance Bond, the Labor and Materials Payment Bond, Construction Documents as enumerated in Exhibit B, and all modifications and amendments thereto (collectively the "Contract Documents"). The Contract Documents comprise the sole agreement between the parties as to the subject matter therein. Any representations or agreements not specifically contained in the Contract Documents are null and void. Any amendments must be made in writing, and signed by both parties in the manner specified in the Contract Documents.

1.3 Project Description

The Project name and location is as follows:

Newport Beach Civic Center Project
1100 Avocado Avenue,
Newport Beach, California 92660

The Project will be delivered pursuant to a phased approach, as more particularly described herein. As contemplated, the Project is generally comprised of the following three phases: (1) mass excavation and grading, (2) 450 stall parking structure, and (3) new Civic Center, dog park, civic lawn, expansion of existing library, City Council chambers, a community room, and a pedestrian bridge over San Miguel Avenue.

The scope of Work is described in the exhibits attached hereto, as may be subsequently supplemented and amended. Subject to the approval of the City, the parties anticipate increasing the scope of the Work hereunder by amendments to the Agreement to accommodate each additional phase of the Project.

1.4 Relationship of the Parties

The CM shall contract directly with such trade contractors as may be necessary for construction of the Project. All such trade contracts shall be issued consistent with the applicable provisions of this Agreement, the Charter, the City's Municipal Code and applicable State law.

ARTICLE 2 CONSTRUCTION MANAGER'S BASIC SERVICES

2.1 Scope of Work

The CM shall perform everything required to be performed, as described herein, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment and all utility and transportation services required for the Project ("Basic Services"). It is not required that the Basic Services be performed in the sequence in which they are described. All of the Work to be performed and materials to be furnished shall be in strict accordance with the provisions of the Contract Documents. The CM is required to perform all activities, at no extra cost to the City, which are reasonably inferable from the Contract Documents as being necessary to produce the intended results.

2.2 Pre-Construction and Program Management Services

The CM shall perform certain pre-construction and program management services relating to the Project pursuant to the PM Contract. Services performed under the PM Contract shall not be considered "Basic Services" under the Agreement.

2.3 Procurement Phase

2.3.1 Master Schedule

The CM shall prepare a Master Schedule for the Project. The Master Schedule shall specify the proposed start and finish dates for each major Project activity. The CM shall submit the Master

Schedule to the City for acceptance, acceptance of which must be in writing by the City. The Master Schedule shall subsequently be updated pursuant to Section 2.4.16.

2.3.2 Prequalifying Bidders

In accordance with applicable law, the CM shall prequalify bidders for each bid package set forth in Exhibit B. This service shall include the following: preparation and transmission of questionnaires; receiving and analyzing completed questionnaires; and preparing summary reports regarding this activity to the City. The CM shall also prepare and transmit to the City a list of prequalified bidders for each bid package. The City shall confirm each prequalified bidder is not presently debarred, suspended, proposed for debarment, declared ineligible or otherwise prohibited from participating on the Project.

2.3.3 Pre-Bid Conference

The CM shall conduct a pre-bid conference for each bid package. These conferences shall be forums for the CM and Designer to explain to the bidders the bid package requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, contractor interfaces, the Project administrative requirements and technical information.

2.3.4 Information to Bidders

The CM shall conduct a telephonic and written correspondence campaign to attempt to create interest among qualified bidders.

The CM shall prepare and post notices and advertisements to solicit bids for the Project in accordance with City policies and applicable law.

The CM shall expedite the delivery of bid documents to the bidders. The CM shall obtain documents from the Designer and coordinate posting to an "FTP site" or copying documents onto CD's for distribution to the bidders. The CM shall maintain a record of bidders receiving documents.

The CM shall develop and coordinate procedures to provide answers to bidders' questions.

2.3.5 Addenda

The CM shall receive from the Designer a copy of all addenda. The CM shall review addenda for clarity, consistency and coordination. By performing the reviews described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design or the content of the design documents. The CM shall also distribute a copy of all addenda to each bidder receiving documents or otherwise make such documents available to all bidders.

2.3.6 Competitive Bidding; Bid Opening

Each bid package identified in Exhibit B shall be competitively bid in accordance with applicable law. The CM shall conduct bid openings and shall evaluate the bids to determine the lowest responsive and responsible bidder for each bid package. The CM shall make recommendations to the City concerning the acceptance or rejection of bids.

2.3.7 Construction Contracts

At the direction of the City, the CM shall prepare, execute, and deliver the Contract Documents between the CM and the selected trade contractor(s) ("Contractor(s)") for each bid package. The CM shall enter into a contract in substantially the same form as is attached hereto as Exhibit H as the same may be amended by agreement of the City and the CM, with the successful bidder within sixty (60) days after receipt of approval of award from the City. The CM shall also issue the notices to proceed with respect to these contracts after City instructs CM in writing to proceed with said contracts.

2.3.8 Self-Performance

[Not used]

2.3.9 Permits, Insurance and Labor Affidavits

The CM shall take responsibility for ensuring that the Contractors have secured the required bonds, insurance, labor affidavits, and waivers. The Designer is responsible to secure the building permit.

2.3.10 Time Management

- (a) Pre-Bid Construction Schedule. The CM shall inform the bidders of their responsibilities regarding the pre-bid construction schedule specified in the Instructions to Bidders or Contract Documents.
- (b) Master Schedule. The CM shall provide a copy of the Master Schedule to the bidders.

2.3.11 Cost Management

- (a) Estimates for Addenda. The CM shall prepare an estimate of costs for all addenda and shall submit the estimates to the City for approval. After approval by the City, the addenda shall be transmitted to bidders and the CM's compensation shall be adjusted as provided in this Agreement.
- (b) Analyzing Bids. Upon receipt of bids, the CM shall evaluate the bids, including alternate prices and unit prices.

2.3.12 Management Information System (MIS)

- (a) Schedule Maintenance Reports. The CM shall prepare and distribute schedule maintenance reports during the Procurement Phase. The reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the progress of the Project.
- (b) Project Cost Reports. The CM shall prepare and distribute the project cost reports during the Procurement Phase. The reports shall specify the actual award prices and construction costs for the Project, compared to the Project and Construction Budget.

- (c) Cash Flow Reports. The CM shall prepare and distribute cash flow reports during the Procurement Phase. The reports shall be based on actual award prices and construction costs for the Project.

2.4 Construction Phase

2.4.1 Pre-Construction Conference

In connection with the Designer, the CM shall conduct pre-construction conferences during which the CM shall review the reporting procedures, site operations and other contractual requirements.

2.4.2 Onsite Management and Construction Phase Communication Procedures

The CM shall provide and maintain a management team on the Project site to provide contract administration and the CM shall establish and implement coordination and communication procedures among the CM, City, Designer, and Contractors.

2.4.3 Inspection

All Work shall be subject to inspection and/or testing in accordance with applicable law. The CM shall coordinate any such inspection and/or testing by the City, including furnishing access to the Project site and the Work. A representative of the CM shall be present for any inspection and/or testing of the Work.

2.4.4 Contract Administration Procedures

The CM shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contractor schedule adjustments, change orders, substitutes, payment requests and the maintenance of logs. The CM shall maintain daily job reports. The CM shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment requests shall be submitted.

2.4.5 Project Site Meetings

The CM shall conduct weekly meetings at the Project site with each Contractor and the CM shall conduct coordination meetings with all Contractors, the City and Designer. The CM shall record, transcribe and distribute minutes to all attendees, the City and Designer.

2.4.6 Coordination of Other Independent Consultants

Technical inspection and testing provided by the City or others shall be coordinated by the CM. The CM shall be provided with a copy of all inspection and testing reports on the day of the inspection or test or when issued. The CM is not responsible for providing, nor does the CM control, the actual performance of technical inspection and testing. The CM is performing a coordination function and is not acting in a manner so as to assume responsibility, in part or in whole, for all or any part of such inspection and testing.

2.4.7 Cleaning Up

During the progress of the Work the CM shall direct Contractors to keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, the CM shall cause to have all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment, machinery and surplus materials and shall leave the site clean and ready for occupancy. The CM shall restore to original condition all property not designated for alteration by the Contract Documents. CM will not be responsible or liable for any pre-existing hazardous waste or material(s) at the site including removal thereof.

2.4.8 Review of Requests for Changes to the Contract Time and Price

The CM shall review the contents of a request for changes to the construction contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the CM's analysis reveals that the request is valid, the CM shall prepare a detailed change order request to the City for approval. In the event that a request affects the Master Schedule, the CM shall update the Master Schedule and shall include the updated schedule in the request submitted to the City. The CM shall prepare the necessary change order documents for signing by the Contractor and City.

2.4.9 Technical Data

The CM shall be entitled to rely upon the accuracy of the technical data contained in reports of explorations and tests of subsurface conditions at the site that have been used in preparation of the Contract Documents and have been furnished to the CM. Should the CM encounter (1) concealed or unknown physical conditions that differ materially from those identified in the drawings or specifications or (2) unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work of the character being performed, the CM shall promptly, after becoming aware thereof and before performing any work in connection therewith, notify the City in writing about the condition and may in its notice request an adjustment to the Guaranteed Maximum Price and the completion date. Time extensions and adjustments to the Guaranteed Maximum Price shall be determined pursuant to Section 6.1.12.

2.4.10 Quality Review

The CM shall establish and implement a program to monitor the quality of construction. The purpose of the program shall be to guard the City against defects and deficiency in the work of the Contractor. The CM shall transmit to the Contractor a notice of nonconforming work and may reject work when it is the opinion of the CM that the work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the CM is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

2.4.11 Uncovering Work

If any Work is covered prior to acceptance by the City or prior to inspection in accordance with applicable law, the work shall, if requested by the City, be uncovered for the City's observation and then be recovered at the CM's expense.

If the City otherwise considers it necessary or advisable that covered work be observed or inspected or tested by others, the CM, at the City's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the City may require that portion of the work in question, furnishing all necessary labor, material and equipment. If it is found that such work does not conform to the requirements of the Contract Documents, the CM shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals. If, however, such work is found to conform to the contract requirements, the City shall reimburse the CM for costs directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

2.4.12 Operation and Maintenance Materials

The CM shall receive from the Contractors operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents.

2.4.13 Beneficial Occupancy

The City retains the right to beneficially occupy all or any portion of the Work prior to final completion. Should the City exercise its right to beneficial occupancy, the CM shall coordinate access to the site to complete Work or to correct nonconforming work to minimize disruption of the City's activities. The City shall use its best efforts to prevent its beneficial occupancy from interfering with the conduct of the CM. If City's beneficial occupancy of an area (other than at the completion of a phase) results in additional costs or schedule impacts to accommodate City's use of a beneficially occupied area, a change order request will be prepared by the CM for approval by the City addressing such impacts. Upon such beneficial occupancy, all risk of damage to the premises beneficially occupied shall shift to the City, who shall secure all appropriate insurance to protect against such damage. The warranty period for the beneficially occupied portion of the Work shall commence upon the date of beneficial occupancy by the City.

It is understood by the CM and the City that this Project will be delivered in the following three phases: (1) mass excavation and grading, (2) design build parking structure, and (3) the balance of the Project which includes the new Civic Center, dog park and library expansion. City agrees to release retention for each phase at the conclusion of each phase.

2.4.14 Substantial Completion

In consultation with the Designer, the CM shall determine when the Project and the Contractors' Work is substantially complete. In consultation with the Designer, the CM shall, prior to issuing a Certificate of Substantial Completion, prepare a list of Work that does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion.

2.4.15 Final Completion

In consultation with the Designer, the CM shall determine when the Project and the Contractors' Work is finally completed and, following completion of corrections, shall issue a Certificate of Final Completion to the City. Following the receipt of payment from the City, the CM shall make all payments due to Contractors in accordance with the agreement between CM and Contractors.

2.4.16 Time Management

- (a) Master Schedule. The CM shall adjust and update the Master Schedule for review and approval by the City. Upon written approval of revised Master Schedule by the City, the CM shall distribute copies to Designer. All adjustments to the Master Schedule shall be made for the benefit of the Project.
- (b) CM Review of Time Extension Requests. The CM shall, prior to the issuance of a change order, determine the effect on the Master Schedule of time extensions requested by the Contractor.
- (c) Recovery Schedules. The CM may require the Contractor to prepare and submit a recovery schedule as specified in the Contract Documents.

2.4.17 Cost Management

- (a) Schedule of Values (Each Contract). The CM shall, in participation with the Contractors, determine a Schedule of Values for each of the construction contracts.
- (b) Change Order Control. The CM shall establish and implement a change order control system. All proposed City-initiated change orders shall first be described in detail in writing by the City to the Designer and then shall be forwarded in a request for proposal to the CM, accompanied by technical drawings and specifications prepared by the Designer. In response to the request for a proposal, the CM shall submit to the City for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. The City shall review the CM's proposal, shall discuss the proposed change order with the CM and endeavor to determine the CM's basis for the cost and time to perform the Work and, as applicable, the effect, if any, on the Guaranteed Maximum Price. The CM shall prepare the change order documents for signature by the City. Upon execution of the change order documents between the CM and City, the CM shall prepare change order documents for signature by the affected Contractor. The CM shall verify that the Work, and any adjustment of time required by approved change orders has been incorporated into the Master Schedule.
- (c) Cost Records. In instances where a lump sum or unit price is not determined prior to performing Work, the CM shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the Contractor in performing the Work.
- (d) Payments. The CM shall review the payment applications submitted by each Contractor and determine whether the amount requested reflects the progress of the Contractor's Work consistent with the contract. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the City a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate of payment that shall be signed by the CM and delivered to the City. The CM shall make payments that are due to all contractors under the terms of the agreement between the CM and contractors, suppliers, and material men within ten (10) days following the receipt of payment for the work from the City.

- (e) Labor. As applicable, the CM, its agents and employees shall be bound by and comply with applicable provisions of the Labor Code and federal, state and local laws related to labor, including regulations regarding the payment of prevailing wages. The CM shall strictly adhere to the provisions of the Labor Code regarding minimum wages; the 8-hour day and 40-hour week; overtime; Saturday, Sunday and holiday work; nondiscrimination because of race, religion, color, national origin, handicap, ancestry, sex or age.

2.4.18 Management Information System (MIS)

- (a) Schedule Maintenance Reports. The CM shall prepare and distribute monthly schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Master Schedule for the Project.
- (b) Project Cost Reports. The CM shall prepare and distribute monthly Project cost reports during the Construction Phase. The reports shall specify actual Project and construction costs compared to the Project and Construction Budget.
- (c) Project and Construction Budget Revisions. The CM shall make recommendations to the City concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Price.
- (d) Cash Flow Reports. The CM shall prepare and distribute monthly cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow.
- (e) Progress Payment Reports (Each Contract). The CM shall prepare and distribute the progress payment reports on a monthly basis. The reports shall state the total construction contract price, payment to date, current payment requested, retainage and actual amounts owed this period. A portion of this report shall be a certificate of payment that shall be signed by the CM and delivered to the City for use by the City in making payments to the CM.
- (f) Change Order Reports. The CM shall prepare and distribute change order reports on a monthly basis during the Construction Phase. The report shall list all City-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CM may be aware.
- (g) Contractor's Safety Program. The CM shall review the safety programs of each Contractor and confirm that each Contractor has established safety programs as required by the Contract Documents. As applicable, the CM shall ensure each Contractor is implementing and administering a confined space entry program (CSEP) in accordance with Sections 5156, 5157 and 5158, Title 8, California Code of Regulations.

2.5 Post Construction Phase

2.5.1 Record Documents

The CM shall coordinate and expedite submittals of information from the Contractors for preparation of record drawings and specifications, and shall coordinate and expedite the transmittal of such record documents to the City. CM shall forward all paper files to Designer for incorporation into CAD files if so desired by City. All Building Information Modeling (BIM) electronic files will be transmitted to City at the conclusion of the project.

2.5.2 Organize and Index Operations and Maintenance Materials

Prior to final completion of the Project the CM shall compile manufacturers' operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner. This information shall then be provided to the City.

2.5.3 Occupancy Permit

The CM shall assist the City in obtaining an occupancy permit by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.

2.5.4 Cost Management

- (a) Change Orders. The CM shall continue to provide services related to change orders as specified in Section 2.4.17(b).

2.5.5 Management Information System (MIS)

- (a) Closeout Reports. At the conclusion of the Project, the CM shall prepare final project accounting and closeout reports.
- (b) MIS Reports for Move-in and Occupancy. The CM shall prepare and distribute reports associated with the Occupancy Plan.

2.6 Additional Services

2.6.1 At the request of the City, the CM shall perform the following Additional Services and shall be compensated for same as provided in Article 6 of this Agreement. The CM shall perform Additional Services only after the City and CM have executed a written amendment to this Agreement providing for such services and such amendment has been approved by the City Council. Additional Services may include:

- (a) Services related to investigation, appraisal, or evaluation of existing conditions, facilities, or equipment or determination of the accuracy of existing drawings or other information furnished by the City;
- (b) Services related to procurement, storage, maintenance and installation of City-furnished equipment, materials, supplies and furnishings;
- (c) Services related to determination of space needs;

- (d) Preparation of space programs;
- (e) Services related to building site investigations and analysis;
- (f) Services for tenant or rental spaces;
- (g) Preparation of a Project financial feasibility study;
- (h) Preparation of financial, accounting or MIS reports not provided under Basic Services;
- (i) Performance of technical inspection or testing;
- (j) Services related to recruiting and training of maintenance personnel;
- (k) Performance of warranty inspections during the warranty period of the Project;
- (l) Consultation regarding replacement of work damaged by fire or other cause during construction and furnishing services in connection with the replacement of such work;
- (m) Preparation for and serving as a witness in connection with any public or private hearing or mediation or legal proceeding;
- (n) Services related to move-in including preparing and soliciting responses to requests for proposals, preparing and coordinating the execution of contracts, conducting pre-moving conferences, administering the contract for moving activities in conjunction with the move-in for the Project and providing on-site personnel to oversee the relocation of furniture and equipment by the movers while actual move-in is in progress.

ARTICLE 3 DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

3.1 The duration of the CM's Basic Services under this Agreement shall be one thousand sixty-seven (1067) consecutive calendar days from the commencement date.

3.2 The commencement date for the CM's Basic Services shall be March 1, 2010.

3.3 The CM's Basic Services shall be performed for the periods of time indicated in this Agreement (see exhibits). If portions of design and construction occur simultaneously, some of the phase durations may overlap.

3.4 Liquidated Damages, Consequential Damages

Delays inconvenience the public and interfere with commerce. Delays also cost taxpayers and the City undue sums of money, adding time needed for administration, engineering, inspection, and supervision. Accordingly, the CM agrees to pay \$2,500 per day for each day the CM fails to achieve substantial completion within the time required by the Agreement, and to authorize the City to deduct these liquidated damages from any money due or coming to the CM. The liquidated damages are City's exclusive remedy against the CM for delays in reaching substantial completion.

The CM and City waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes: (1) damages incurred by the City for

rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred by the CM for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

ARTICLE 4 CHANGES IN THE CONSTRUCTION MANAGER'S BASIC SERVICES AND ADDITIONAL COMPENSATION

4.1 City Changes

4.1.1 The City, without invalidating this Agreement, may make changes in the CM's Basic Services specified in Article 2 of this Agreement. The CM shall notify the City within fifteen (15) business days of changes which increase or decrease the CM's compensation, the duration of the CM's Basic Services, or both.

4.1.2 Additional Compensation and Extended Duration

The CM shall be entitled to receive additional compensation and additional time when the scope of Basic Services is increased or extended through no fault of the CM. If the scope of Basic Services is increased or the duration of the CM's Basic Services is extended or the duration of the Basic Services to be performed within a phase duration specified in Article 3 is extended, the CM shall be entitled to receive additional compensation and the duration of the Agreement shall be extended. A written request for additional compensation shall be given by the CM to the City within 30 days of the occurrence of the event giving rise to such request. The amount of additional compensation to be paid and the amount of extension of the duration of this Agreement shall be determined on the basis of the CM's labor rates and fee percentage established herein.

4.1.3 Changes in the CM's Basic Services

Subject to Section 5.14, changes in the CM's Basic Services and entitlement to additional compensation shall be made by a written amendment to this Agreement executed by the City and the CM and approved as to form by the Office of the City Attorney for the City. The amendment shall be executed by the City and CM and approved as to form by the Office of the City Attorney for the City prior to the CM performing the services required by the amendment. The CM shall proceed to perform the services required by the amendment only after receiving written notice from the City directing the CM to proceed.

4.1.4 Payment of Additional Compensation

The CM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 6 of this Agreement.

ARTICLE 5 CITY RESPONSIBILITIES

5.1 The City shall provide to the CM complete information regarding the City's requirements for the Project.

5.2 The City shall examine information submitted by the CM and shall render decisions thereto promptly.

5.3 The City shall furnish design, legal, accounting and insurance counseling services as may be necessary for the Project.

5.4 If the City observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the City shall give prompt written notice thereof to the CM.

5.5 The City shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work in cooperation with the CM, consistent with this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the CM.

5.6 The City has retained a Designer whose services, duties and responsibilities are described in a written agreement between the City and Designer. The services, duties, and responsibilities of the Designer set out in the agreement between the City and Designer shall be compatible and consistent with this Agreement and the Contract Documents. The City shall, in its agreement with the Designer, require that the Designer perform its services in cooperation with the CM, consistent with this Agreement and in accordance with the planning, scheduling and budgetary requirements of the Project as determined by the City and documented by the CM. The terms and conditions of the agreement between the City and the Designer shall not be changed or waived without written consent of the CM, whose consent shall not be unreasonably withheld.

5.7 The City shall approve the Project and Construction Budget and any subsequent revisions in writing.

5.8 The City shall afford the CM proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment.

5.9 If the City contracts separately with any other parties, the City shall cause all such agreements to be compatible and consistent with this Agreement. Each of the agreements shall include waiver of subrogation as required herein.

5.10 The City shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, utility company fees, permits and charges required for the construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.

5.11 Prior to commencement of each phase of the Project, the City shall furnish evidence satisfactory to the CM that sufficient funds are available and committed for that phase. Unless such reasonable evidence is furnished, the CM is not required to commence its services and may, if such evidence is not presented within a reasonable time, suspend the services specified in this Agreement upon fifteen (15) days written notice to the City and in such event, the CM shall be compensated in the manner provided in Section 8.2.

5.12 The City, its representatives and consultants, including the Designer and individuals performing any inspection and/or testing under Section 2.4.3, shall communicate with the Contractors only through the CM.

5.13 Except as to independent inspectors performing within the scope of their responsibilities, the City shall send to the CM and shall require the Designer to send the CM copies of all notices and communications sent to or received by the City or Designer relating to the Project.

5.14 The City shall designate, in writing, an officer, employee or other authorized representatives to act in the City's behalf with respect to the Project. This representative shall have the authority to approve changes and execute documents on behalf of the City that are consistent with existing City policies and are in substantial conformance with the terms of this Agreement. This representative shall be available during working hours and as often as may be required to render decisions and furnish information in a timely manner.

The City's representative is: the City Manager, or his designee.

5.15 The City shall make payments to the CM on the basis of the Contractor's payment applications that are certified by the CM and on the basis of the CM's invoices for its services performed.

5.16 The City shall provide CM with copies of all environmental documents and testing reports prepared under the California Environmental Quality Act.

ARTICLE 6 COMPENSATION FOR CM SERVICES AND PAYMENT

6.1 Guaranteed Maximum Price

6.1.1 As of the Effective Date, the City and the CM agree that the Guaranteed Maximum Price is fourteen million, five hundred five thousand and six hundred ninety-four dollars (\$14,505,694), which is inclusive of the Cost of the Project as respects the bid package(s) identified in Exhibit B, the Fee for Basic Services, the Direct Expenses and the CM Fee of 3.25%. CM's Basic Services labor rates are understood and agreed to be as detailed in Exhibit A.

6.1.2 Documentation of the Guaranteed Maximum Price, attached hereto as Exhibit A and made a part hereof by reference, includes drawings, sketches, specifications, calculations and/or other data used to identify the basis of the Guaranteed Maximum Price. The Guaranteed Maximum Price includes an agreed upon contingency amount for use by the CM and is limited to the work described in the documentation attached as Exhibit A. The Guaranteed Maximum Price shall only be subject to modification pursuant to Section 6.1.9 or as otherwise defined in this Agreement.

6.1.3 The Guaranteed Maximum Price includes those taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Any increase or decrease in taxes that affect the Guaranteed Maximum Price and that are enacted after the Guaranteed Maximum Price is submitted shall be incorporated into that price by change order.

6.1.4 The Guaranteed Maximum Price relates only to the total Cost of the Work and not to any single line item or other specific element of the Work or cost breakdown. The Guaranteed Maximum Price shall include a Contingency. The parties acknowledge and agree that the Contingency may be used at the sole discretion of the CM to cover any costs necessary to complete the Work, including for Basic Services; however, said Contingency is not to cover any changes in the Work, including the cost of unforeseen conditions, design errors, omissions, deficiencies or defects, scope changes, or any combination thereof, all of which shall be paid from the City's separate contingency, or for costs resulting from the gross negligence or willful misconduct of the CM. The CM may access and bill against the Contingency whenever the CM's actual costs for any other line items exceeds the costs reflected in the estimate for those line items, and the City shall timely pay or reimburse CM pursuant to Section 6.2.4 for such contingency billings provided that such payment or reimbursement does not cause the Guaranteed Maximum Price to be exceeded.

6.1.5 In the same manner, whenever CM's estimate for any given line item in its overall estimate, including without limitation the line items for Basic Services, exceeds the cost to complete the Work under that line item, the CM may transfer the excess to the other line item or items and thereafter bill and be paid or reimbursed for Work performed under those line item(s), provided that such payment or reimbursement does not cause the Guaranteed Maximum Price to be exceeded. Concurrently with its applications for payment, the CM will provide the City with all documentation the City reasonably requires to identify each transfer included in the application and the effect of the transfer, if any, on the Cost of the Project.

6.1.6 Included in the Guaranteed Maximum Price (GMP) are the Allowance Items. To the extent that the actual cost of an Allowance Item shall exceed the amount of the allowance, the GMP shall be increased, dollar for dollar, in accordance with such excess over the

allowance. To the extent that the actual cost for any Allowance Item is less than the allowance, the GMP shall likewise be decreased accordingly together with the applicable proportion of the CM Fee of 3.25%. In determining the CM Fee of 3.25%, the CM has taken into consideration the Work to be performed for Allowance Items (e.g., unloading, handling and storage at the Project, labor, installation costs, overhead, profit, etc.), and no additional charges in excess of the CM Fee of 3.25% shall be payable to the CM in relation to any Allowance Item.

6.1.7 If, upon final completion of the Project, any uncommitted funds remain with respect to the Guaranteed Maximum Price, any Contingency, the Cost of the Project, the Fee for Basic Services, and/or Direct Expenses ("Uncommitted Funds"), the City shall be entitled to retain seventy-five percent (75%) of such Uncommitted Funds and the CM shall be entitled to payment from the City for twenty-five percent (25%) of such Uncommitted Funds.

6.1.8 The City may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Section 6.1.12.

6.1.9 GMP Change Orders

Pursuant to Section 2.3, the CM shall request and receive bids for each bid package identified in Exhibit B and shall advise the City with respect to award of each contract to the lowest responsive and responsible bidder. As such contracts are procured and awarded, the Guaranteed Maximum Price shall be adjusted as follows:

- (a) Not later than thirty (30) days after issuance of a Notice of Award for each bid package, unless such time is mutually agreed to be extended, the CM shall propose a Guaranteed Maximum Price adjustment ("GMP Change Order") to reflect the increased scope of Work. The GMP Change Order shall include (1) documentation used to identify the basis of the proposed Guaranteed Maximum Price adjustment, including drawings, sketches, specifications, calculations or other relevant data and (2) the change order documents for signature by the CM and City.
- (b) The City Council shall approve and the City shall accept such GMP Change Order within thirty (30) days of the date of the receipt unless such time is mutually agreed to be extended. If the City does not accept the GMP Change Order within the time period herein provided, the GMP Change Order shall be deemed to have been rejected by the City, in which case the CM and the City shall promptly meet and confer in good faith as to whether the particular bid package should be re-bid or whether some agreed upon alternative course of action should be followed.
- (c) Upon the City's execution of the change order documents, the supporting documentation included in the GMP Change Order shall be attached hereto as Exhibit A and shall be made a part of the Contract Documents.
- (d) In the event the City does not accept the CM's proposed GMP Change Order or elects not to go forward with the Project, the CM shall be reimbursed in accordance with the requirements for termination as defined in Sections 8.1.1 and 8.1.3 of this Agreement.
- (e) It is anticipated that the following phases will be added via change order to this agreement: (1) Design Build 450 stall Parking Garage, and (2) Civic Center and Park Project

6.1.10 In the event that the Cost of the Project exceeds the Guaranteed Maximum Price and any adjustments therein as may be due pursuant to the terms hereof, the CM shall continue to perform at no additional cost to the City until the Project, defined by this Agreement and all Exhibits hereto is complete. The CM shall be responsible for paying all costs, in accordance with the terms of this Agreement that may be necessary to complete the Project, even if such amounts are in aggregate in excess of the Guaranteed Maximum Price.

6.1.11 Cost of the Project

The term "Cost of the Project" shall mean all amounts paid by the City to the CM for payment to all separate Contractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project including general conditions items.

- (a) The Cost of the Project shall not include the following:
 - (i) The Fee for Basic Services;
 - (ii) The CM Fee of 3.25%
 - (iii) All professional fees paid by the City to the Designer or other consultants retained directly by the City;
 - (iv) All costs paid directly by the City to contractors or suppliers retained directly by the City and outside the scope of the Guaranteed Maximum Price;
 - (v) All Additional Services costs as defined herein; or
 - (vi) All other costs not within the control of the CM or identified as being not within the Guaranteed Maximum Price.
- (b) The Cost of the Project may be further defined in the documentation set forth in Exhibit A. If the provisions of this Section 6.1.11 and the documentation in Exhibit A differ, then the CM shall identify and explain the difference, but the documentation provided in Exhibit A shall be the basis for determining the scope of the Guaranteed Maximum Price.

6.1.12 Other Adjustments to the Guaranteed Maximum Price

The CM understands, confirms and agrees that its responsibility hereunder is to construct the Project in accordance with the drawings and specifications. The City and CM shall use the documentation specified in Exhibit A in determining whether the scope of the Project or a part thereof has been changed and in determining entitlement to an adjustment to the Guaranteed Maximum Price. A determination regarding all requests for adjustment to the Guaranteed Maximum Price shall be made in writing within thirty (30) days from the date of a written request for an adjustment, unless such time is mutually agreed to be extended.

- (a) The amount of adjustment to increase or decrease the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:
 - (i) By mutual acceptance of a lump sum, properly itemized and supported by cost data; or
 - (ii) By unit prices defined and listed in Exhibit A; or
 - (iii) If neither of the methods set forth in Sections 6.1.12(a)(i) or 6.1.12(a)(ii) is agreed upon by the City, the CM, provided it receives a written order signed by the City, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the cost records for the changed work. Choice of this method shall not restrict the City or the CM from resolving the matter pursuant to a judicial proceeding as to the justification or right of the CM to an increase in the Guaranteed Maximum Price due to such work. In such case, the CM shall keep and present in such form as may be agreeable to the City an itemized accounting together with appropriate supporting data of the actual cost of the Project.
- (b) If the unit prices are stated and if the quantities originally contemplated by the CM are so changed in a proposed change order or as a result of several change orders that application of the agreed unit prices to the quantities or work proposed cause substantial inequity to the City or the CM, the applicable unit prices and Guaranteed Maximum Price shall be adjusted.
- (c) The Designer shall have the authority to order minor changes in the Project consistent with the intent of the drawings and specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only and shall be signed by the City and the CM prior to the work being performed.

6.2 Cost Plus Fixed Fee

The City shall compensate the CM on the basis of the Cost of the Project plus the CM Fee of 3.25%, and the Direct Expenses, as follows:

6.2.1 Compensation for Basic Services

The CM shall be compensated for performing the Basic Services described in Article 2 as follows:

- (a) A Fee for Basic Services of seven million, one hundred sixty-nine thousand and two hundred fifty-five dollars (\$7,169,255);
- (b) The Cost of the Project plus the CM Fee of 3.25%; and
- (c) Subject to prior written consent by the City, the cost of independent engineers, architects and other consultants employed by the CM and performing services related to the Project shall be subject to escalation on an annual basis using CPI.

6.2.2 Direct Expenses

- (a) In addition to the compensation for Basic and Additional Services stated herein, the CM shall be reimbursed for direct expenses for performing its Basic and Additional Services, subject to the Guaranteed Maximum Price. Direct expenses are those actual expenditures made by the CM, its principals, employees, independent engineers, architects, and other consultants in the interest of the Project, including:
- (i) Long distance telephone calls, telegrams and fees paid for securing the approval of authorities having jurisdiction over the Project;
 - (ii) Handling, shipping, mailing and reproduction of materials and documents;
 - (iii) Subject to the reasonable approval by the City, transportation and lodging expenses when traveling in connection with the Project;
 - (iv) Computer equipment expenses, including rental of electronic data processing or word processing equipment, electronic data processing services, computer software and internal IT support fees;
 - (v) Premiums for insurance beyond the limits normally carried by the CM that are required by the terms of this Agreement. The cost of liability insurance (0.91%) and CM's labor rates are understood and agreed to be the amounts set forth in Exhibit A attached herein;
 - (vi) Gross receipts taxes, sales or use taxes, or services taxes required to be paid as a result of this Agreement;
 - (vii) Field office expenses including the cost of office rentals, field telephones, utilities, field office furniture, equipment and supplies;
 - (viii) Premium time, overtime and shift work directed to be performed by the City; and
 - (xii) Other items as may be itemized in CM's Basic Services per Exhibit A.
- (b) Bond premiums.

6.2.3 Construction Manager's Accounting Records

Records for the CM's personnel expenses, independent engineer's, architect's and other consultant's fees and direct expenses pertaining to the Project shall be maintained on the basis of generally accepted accounting practices and shall be available for inspection by the City or the City's representative at mutually convenient times for a period of three years after completion of the CM's Basic Services.

6.2.4 Payments.

Payments to the CM shall be made monthly, not later than thirty (30) days after presentation of the CM's invoice to the City as follows:

- (a) Payment of the Fee for Basic Services as indicated in Section 6.2.1(a) shall be equal to the percentage complete of the Project, provided that CM shall be entitled to payment to cover mobilization costs at the beginning of the Project, subject to approval by the City.
- (b) Payment of the Cost of the Project and the CM Fee of 3.25% shall be based on mutually agreed percentage complete for each line item in the Schedule of Values contained in the Application for Payment;
- (c) All Applications for Payment by CM shall contain and reflect a deduction for retainage equal to ten percent (10%) of the Cost of the Work. No retention shall be withheld for CM's Basic Services, Direct Expenses, or CM fee. As the Project has multiple phases, upon the satisfactory completion of each phase (i.e., Mass Excavation, Parking Structure, and Civic Center and Park), which includes fully completing the work, delivery of all plans, manuals guarantees and other similar documents, and their work has been accepted by City, CM and Designer, City shall within 60 days release all retention monies withheld from Contractors for the phase.
- (d) Reimbursement for direct expenses shall be in amounts equal to expenditures made during the billing period and during previous billing periods not yet invoiced;
- (e) Pursuant to Section 20104.5 of the Public Contract Code, payments due to the CM that are unpaid for more than thirty (30) days from the date of the CM's invoice shall bear interest at the annual rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

6.2.5 Compensation for Additional Services

The CM shall be compensated and payments shall be made for performing Additional Services in the same amount and manner as provided in Article 6 for Basic Services. There shall be an increase in the CM fee set out in Section 6.2.1(b) in the amount of 5% of the Cost of the Work plus the direct cost of any additional Basic Services required to perform the Additional Service. Pursuant to Section 2.6, the CM shall not be compensated for Additional Services without written authorization by the City.

6.3 Adjustments to the CM's Compensation

The CM shall promptly notify the City when changes to the scope of the Project or a part thereof or when delays caused in whole or in part by the City or Designer increase or extend the scope or duration of the CM's Basic Services. The CM shall be entitled to receive additional compensation and an increase in the duration of this Agreement pursuant to the provision of Article 4 and consistent with the provisions of Article 6 of this Agreement. Pursuant to Section 7102 of the Public Contract Code, the CM shall be compensated for damages incurred due to delays for which the City is responsible.

ARTICLE 7 INSURANCE AND MUTUAL INDEMNITY

7.1 Insurance

Without limiting the CM's indemnification of the City, and prior to commencement of work, the CM shall obtain, provide and maintain as a cost of the work during the term of the Agreement, a

policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to the City. It is understood and agreed that the cost of such liability insurance cost shall be deemed to be 0.91% of the total of the Cost of the Work and Basic Services.

Requirements of specific coverage features or limits contained in this Article are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. Insurance coverage and limits provided by the CM and Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to City or its operations limits the application of such insurance coverage.

The City may elect to implement an Owner Controlled Insurance Program (OCIP). An OCIP is a series of insurance policies issued by one or more companies to cover the enrolled Contractor and eligible subcontractors of all tiers for a given contract. If the City elects to implement an OCIP, it will issue an addendum to this Agreement and will purchase certain insurance coverages covering on-site construction activities for enrolled and eligible Contractors which may include workers' compensation, general liability, and excess liability coverage. All other insurance terms and conditions referenced below and not amended in any addendum to this Agreement remain.

In the event that the City elects to alter the insurance requirements set forth in this Section 7.1, the CM shall be entitled to an adjustment to the Guaranteed Maximum Price in accordance with Section 6.1.12.

7.1.1 Certificates of Insurance

The CM shall provide original certificates of insurance with original endorsements to the City as evidence of the insurance coverage required herein. Insurance certificates must be approved by the City's Risk Manager prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

The CM shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the CM, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the CM's bid.

7.1.2 Signature

A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.

7.1.3 Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger)

in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

7.1.4 Coverage Requirements.

- (a) Workers' Compensation Coverage. The CM shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his or her employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, the CM shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) calendar days (10 calendar days written notice of non-payment of premium) prior to such change. The insurer shall agree to waive all rights of subrogation against the City, its officers, agents, employees and volunteers for losses arising from work performed by the CM for the City.

- (b) General Liability Coverage. The CM shall maintain commercial general liability insurance in an amount not less than \$25,000,000 per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under the Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.
- (c) Automobile Liability Coverage. The CM shall maintain automobile insurance covering bodily injury and property damage for all activities of the CM arising out of or in connection with work to be performed under the Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$2,000,000 combined single limit for each occurrence.

7.1.5 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the CM shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7.1.6 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (a) General Liability and Automobile Liability Coverages
- (i) The City, its elected or appointed officers, agents, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the CM, including the insured's general supervision of the CM; products and completed operations of the CM; premises owned, occupied or used by the CM; or automobiles

owned, leased, hired or borrowed by the CM. The coverage shall contain no special limitations on the scope of protection afforded to the City, its elected or appointed officers, officials, employees, agents or volunteers.

- (ii) The CM's insurance coverage shall be primary insurance and/or primary source of recovery as respects the City, its elected or appointed officers, agents, officials, employees and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the CM's operations or services provided to the City. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of the CM's insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, agents, officials, employees and volunteers.
- (iv) The CM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (v) The insurance afforded by the policy for contractual liability shall include liability assumed by contractor under the indemnification/hold harmless provision contained in this Agreement.
- (vi) The insurer shall agree to waive all rights of subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers for losses arising from work performed by the CM for the City.

(b) All Coverages

- (i) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, rescinded by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- (ii) Timely Notice of Claims. The CM shall give the City prompt and timely notice of any claim made or suit instituted arising out of or resulting from the CM's performance under this agreement.
- (iii) All of the executed documents referenced in this Agreement must be returned within ten (10) working days after the date on the "Notification of Award," so that the City may review and approve all insurance and bonds documentation.

7.1.7 Force Majeure

Pursuant to Public Contract Code Section 7105, the CM shall not be responsible for the repairing and restoring damage to Work, when damage is determined to have been proximately caused by force majeure events, including but not limited to acts of the public enemy, acts or failures to act of other agencies, in either their sovereign or contractual capacity, voter

initiatives, legal actions, changes in law, fires, floods, seismic activity, labor disputes, freight embargoes, unusually severe weather and actions or failures to act by the City or the City's separate contractors. In every case, the failure to perform must be beyond the control and without the fault or negligence of the CM. .

7.2 Notices and Recovery

The City and CM each shall provide the other with copies of all policies thus obtained for the Project. Each party shall provide the other with sixty (60) days notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

7.3 Indemnity

7.3.1 To the fullest extent permitted by law, CM shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any work performed or services provided under this Agreement including, without limitation, defects in workmanship or materials or CM's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of CM, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

Notwithstanding the foregoing, nothing herein shall be construed to require CM to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties or from any claim relating to the City's failure to pay any undisputed payments. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the CM..

7.3.2 The City shall cause the Designer to indemnify and hold harmless the City, its employees, agents and representatives to the same extent and in the same manner that CM has provided indemnification for the City under Section 7.3.1.

7.3.3 The City hereby indemnifies and holds harmless the CM and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage for which the City is liable that arise out of or result from breach of this Agreement or negligent acts or omissions of the City, its employees, agents, representatives, independent contractors, suppliers, and the Designer.

7.3.4 The CM shall cause the Contractor to indemnify and hold harmless the City, CM and Designer from and against any and all claims, demands, suits, damages, including damages resulting from personal injury or property damage, costs, and expenses and fees that are asserted against the City, CM and the Designer and that arise out of or result from negligent

acts or omissions or the breach of the contract by the Contractor, its employees, agents and representatives in performing the Work.

7.3.5 Nothing in this article, nor any other portion of the Contract Documents shall be construed as authorizing any award of attorneys' fees in any action to enforce the terms of this Agreement, except to the extent provided for in Section 7.3.1, above.

7.3.6 The rights and obligations set forth in this Article shall survive the termination of this Agreement.

7.4 Builder's Risk Insurance

The City shall purchase and maintain at all times during the performance of any Work by the Contractor hereunder, at City's expense, a builders risk insurance policy upon the Work and materials, tools and equipment used in connection with the Work with all coverage normally contained therein, including, but not limited to, fire, natural causes (other than earthquake and flood), and extended coverage, theft, vandalism, malicious mischief, temporary storage, and transit to and from the job site of materials acquired for incorporation into the Work, in an amount equal to one hundred percent (100%) of the full replacement value thereof, and shall cover reasonable compensation for Designer's and Contractor's services and expenses required as a result of such insured loss. The builder's risk policy shall name the Contractor and its subcontractors and sub-subcontractors and material suppliers as additional insureds to the extent of their interest in property covered under the policy. The City shall be responsible for the payment of any deductibles under such builders risk policy. Such property insurance shall be maintained until substantial completion or certificate of occupancy, whichever is earlier. At its option, the City may include coverage for earthquake and/or flood, with such coverage limits (which may be lower than the other builders risk limits) and exclusions.

7.4.1 Perils and Property Insured

Coverage shall apply to the Work, any falsework, temporary buildings (but not trailers), and property or materials to be included in the Work, inclusive of while at temporary locations away from the jobsite or in transit on land in the United States or its navigable waters, but not including tools, machinery, equipment, trailers and sheds belonging to the Contractor, Subcontractors or Sub-subcontractors. Coverage for debris removal including demolition occasioned by enforcement of any applicable legal requirements shall be included.

7.4.2 Deductibles-

[Not Used]

7.4.3 Copies of Required Insurances

Certificates of Insurance and copies of policies, as evidence of the insurance required by this agreement, shall be furnished by the City to Contractor before any work hereunder is commenced by or on behalf of the City. The Certificates of Insurance shall provide that there will be no cancellation without thirty (30) days prior written notice (except ten (10) days for non-payment of premium) by registered mail to Contractor and Designer.

7.4.4 List of Additional Insureds

The CM, Contractors and lower tier subcontractors of any tier shall be named as additional insureds.

7.4.5 If the City does not intend to purchase such property insurance required by this Agreement and with all of the coverages in the amount described above, the City shall so inform the CM in writing prior to commencement of the Work. The CM may then affect such insurance, and by appropriate Change Order the cost thereof shall be charged to the City. If the CM is damaged by the failure or neglect of the City to purchase or maintain the Builder's Risk insurance required by this Agreement, then the City shall bear all reasonable costs properly attributable thereto.

7.4.6 Partial or beneficial occupancy or use in accordance with Section 2.4.13 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The City shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

7.4.7 Boiler and Machinery Insurance

The City shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the City; this insurance shall include interests of the City, CM, Contractors and Subcontractors in the Work. The City shall be the named insured and CM, Contractors and Subcontractors shall be additional insureds.

7.4.8 Loss of Use Insurance-

The City, at the City's option, may purchase and maintain such insurance as will insure the City against loss of use of the City's property due to fire or other hazards, however caused. The City waives all rights of action against the CM for loss of use of the City's property, including consequential losses due to fire or other hazards however caused.

7.4.9 If the CM requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the City shall, if possible and if the premiums are reasonable, include such insurance, and the cost thereof shall be charged as agreed by City and CM.

7.4.10 If during the Project construction period the City insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the City waives its rights of subrogation against the CM and Contractors for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

7.4.11 Waivers of Subrogation

The City and CM waive all rights against (1) each other and any of their Contractors, agents and employees, each of the other, and (2) the Designer, Designer's consultants, separate

contractors for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 7.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the City as fiduciary. The City or the CM, as appropriate, shall require of the Designer, Designer's consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

7.4.12 A loss insured under City's property insurance shall be adjusted by the City as fiduciary and made payable to the City as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The CM shall pay Contractors their just shares of insurance proceeds received by the CM, and by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

7.4.13 The CM as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the City's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Article 9.

ARTICLE 8 TERMINATION AND SUSPENSION

8.1 Termination

8.1.1 This Agreement may be terminated by the City for convenience after seven (7) days written notice to the CM.

8.1.2 This Agreement may be terminated by either party hereto upon seven (7) days written notice should the other party fail substantially to perform in accordance with the terms hereof through no fault of the terminating party or if the Project in whole or substantial part is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction or as a result of an act of government.

8.1.3 In the event of termination pursuant to Section 8.1.1, the CM shall be paid its compensation for services performed to the date of termination, services of professional consultants then due, direct expenses and all termination expenses. Termination expenses are defined as those expenses arising prior, during and subsequent to termination that are directly attributable to the termination, plus an amount equaling twenty (20) percent of the unearned CM Fee of 3.25%.

8.1.4 In the event of termination pursuant to Section 8.1.2, the CM shall be paid its compensation for services performed to the date of termination, services of professional consultants then due, direct expenses and all termination expenses. No amount computed as provided in Sections 8.1.3 shall be paid in addition, if the termination is due to the CM's failure to substantially perform in accordance with the terms of this Agreement.

8.2 Suspension

8.2.1 The City may order, in writing, the CM to suspend all or any part of the CM's services for the Project for the convenience of the City or for work stoppage beyond the control of the City or the CM. If the performance of all or any part of the services for the Project is suspended, an adjustment in the CM's compensation shall be made for the increase, if any, in the cost of the CM's performance of this Agreement caused by such suspension and this Agreement shall be modified in writing accordingly.

8.2.2 In the event the CM's services on the Project are suspended, the City shall reimburse the CM for all of the costs of its construction site staff, assigned Project home office staff and other costs provided for by this Agreement for the first thirty (30) days of such suspension. The CM shall reduce the size of such staff for the remainder of the suspension period as directed by the City and during such period, the City shall reimburse the CM for all costs of reduced staff. Upon cessation of the suspension, the CM shall restore the construction site and home office staff to its former size.

8.2.3 Persons assigned to another project during such suspension or period and not available to return to this Project upon cessation of the suspension shall be replaced.

8.2.4 If the Project is suspended by the City for more than three (3) months, the CM shall be paid compensation for services performed prior to receipt of written notice from the City of such suspension, together with direct expenses then due and all expenses and costs directly resulting from such suspension. If the Project is resumed after being suspended for more than six (6) month, the CM shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.

ARTICLE 9 DISPUTE RESOLUTION

All claims, disputes or controversies between the City and the CM arising out of, or relating to the Agreement, the Project, the Work, the Contract Documents or the breach thereof will, if the parties cannot resolve their differences, be resolved by mediation in accordance with the provisions set forth below in Section 9.1.

9.1 Mediation

In the event the parties are unable to resolve a dispute, and as a prerequisite to filing a claim under the provisions of Government Code Section 900 et seq., either party may submit a notice of mediation to the other party. All matters submitted to mediation shall be administered in accordance with the Construction Industry Mediation Rules of the American Arbitration Association unless the parties mutually agree otherwise. The mediator shall be experienced in the subject matter of the dispute, as agreed upon by the City and the CM. If the City and the CM are unable to agree upon a mediator, then one shall be selected by the American Arbitration Association.

The expenses and fees of the mediation and the administrative fees, if any, will be divided among the parties equally. Each party will pay its own counsel fees, witness fees, and other expenses incurred for its own benefit.

The intent of this provision is that in the event the parties cannot resolve an issue, they participate in good faith mediation in an effort to efficiently resolve disputes.

9.2 Claims

If the parties are unable to resolve the dispute by mediation, either party may file a claim in the Orange County Superior Court, provided that such action is taken within six months from the date of the conclusion of the mediation. By entering into this Agreement, the CM warrants and agrees that the substantive laws of the State shall govern all Agreement disputes.

ARTICLE 10 ADDITIONAL PROVISIONS

10.1 Confidentiality

Subject to the California Public Records Act (Government Code Sections 6250 – 6270) and any lawful court order, the CM will keep all information designated and marked by the City as "Confidential" and concerning the Project confidential, except for communications incident to completion of the Project between the CM, Designer, and Contractor, and their independent professional engineers, architects and other consultants and subcontractors, and except for publicity approved by the City and communications in connection with filings with governmental bodies having jurisdiction over the design or construction of the Project.

10.2 Limitation and Assignment

The City and the CM each bind itself, its successors, assigns, insurers, and legal representatives to the terms of this Agreement.

Neither the City nor the CM shall assign or transfer its rights or interest in this Agreement without the written consent of the other, which consent shall be given in each party's sole and absolute discretion. However, nothing contained in this Section 10.2 can prevent the CM from employing contractors or such consultants, associates or subcontractors as the CM may deem appropriate to assist in performance of the services and of the Work hereunder.

The City and the CM agree to comply with Section 7103.5 of the Public Contract Code, which states "In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

10.3 Governing Law

Unless otherwise provided, this Agreement shall be governed by the law of the State of California.

10.4 Venue

The venue of any judicial proceeding under this Agreement shall be Orange County, California.

10.5 Extent of Agreement

This Agreement represents the entire and integrated agreement between the City and the CM and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by written instrument signed by both the City and the CM. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Designer are not intended third party beneficiaries of this Agreement.

10.6 Severability

If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

10.7 Meaning of Terms

References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

10.8 Notices

Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered or sent by registered or certified mail, postage prepaid, addressed as follows:

To the City:

City of Newport Beach
Public Works Department
P.O Box 1768
3300 Newport Boulevard
Newport Beach, CA 92663
Attention: Stephen G. Badum
(949) 644- 0000

With a copy to:

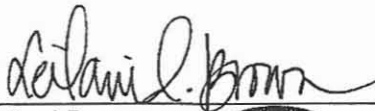
City of Newport Beach
City Clerk
P.O. Box 1768
3300 Newport Boulevard
Newport Beach, CA 92663
Attention: Leilani Brown

To the CM:

C.W. Driver
468 North Rosemead Boulevard
Pasadena, CA 91107
Attention: Dana Roberts
(626) 351-8800

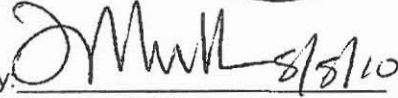
IN WITNESS WHEREOF, this Agreement has been executed as of the last date set forth next to the signatures of the parties, below.

ATTEST


Leilani Brown
CITY CLERK



Approved as to form


By:  5/5/10
Leonie Mulvihill
Acting City Attorney 5/4/10

CITY OF NEWPORT BEACH
A Municipal Corporation

By: 
Mayor

Date: 4/21/10

C.W. DRIVER INC.
A California Corporation

By: 
Dana Roberts
President

Date: 5/26/10

By: 
Insert Name BEBIE KOVARA
Financial Officer

Date: 5/26/10

April 27, 2010

Mr. Steve G. Badum
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658-8915

**Re: Newport Beach Civic Center and Park Project
Guaranteed Maximum Price (GMP)
Mass Excavation and Shoring Construction Phase I
C.W. Driver Project Basic Services**

Dear Steve:

C. W. Driver is pleased to submit our Guaranteed Maximum Price Proposal (GMP) for:

- a) The Mass Excavation and Shoring Phase of the Newport Beach Civic Center and Park Project
- b) C.W. Driver's Basic Services for the Newport Beach Civic Center and Park Project for on-site project staff and support facilities for all project construction phases as per current scope of work identified in the 100% DD set of design documents prepared by the architect, Bohlin, Cywinski, Jackson (BCJ) dated February 18, 2010 and per C.W. Driver's attached construction schedule and

For added clarification and detail of our proposed services, please see attached documents. C.W. Driver is very excited about the opportunity to continue to work with the City of Newport Beach and look forward to a very successful project.

The Total Phase I Proposal for these services is as follows:

Item	Description	Total
I	C.W. Driver Basic Services for Civic Center & Park Project GMP	7,169,255
II	Mass Excavation and Shoring Construction Phase GMP*	6,620,410
	Subtotal	13,789,665
III	General Liability Insurance (0.91%)	125,486
IV	Direct Expenses Allowance for Project Bond (1.0%)	137,897
V	Construction Management Fee (3.25%)	452,646
	TOTAL PHASE I	\$14,505,694

* Includes Contractor Construction Contingency



Mass Excavation Construction Phase

The GMP for this work is based upon the scope of work identified in the Mass Excavation Bid Set of Drawings by Bohlin, Cywinski, Jackson (BCJ) dated March 17, 2010 including their Addendum #1 for this package issued on March 31, 2010. (Please see attached drawing list.)

C.W. Driver's Project Basic Services

C.W. Driver's Basic Services Proposal of **\$7,169,255** is a Guaranteed Maximum Price (GMP) for Basic Services labor and support services through the completion of the construction of the Newport Beach Civic Center Project as per CWD's attached construction schedule and for the scope of work identified in BCJ's 100% Design Development Set of Project Documents and Specifications dated February 18, 2010. Please see the attached C.W. Driver attachments for a detailed breakdown of the services included in this proposal.

Basic Services Labor =	\$5,648,095
Basic Support Services =	<u>\$1,521,160</u>
Subtotal CWD Basic Services* =	\$7,169,255

*Excludes Project Liability Insurance and Project Fee. Please see breakdown on the front of this proposal for these costs.

Exclusions:

- a. *Program Management and Preconstruction Services. (See separate CWD Proposal)*
- b. *Monthly Site Utility Consumption Including Site Offices (installation excepted)*
- c. *Project Night Watchman*
- d. *Materials and Soils Testing and Inspection*
- e. *Shuttle Services for Trades and Temporary Parking expenses*
- f. *Owner Scope Changes*
- g. *Unknown Subsurface Conditions*
- h. *Building Permit Fees*
- i. *Utility Company and Connection Fees*
- j. *Subsequent Construction Phases and Scope of Work not Addressed by the Mass Excavation Design Package*
- k. *Three Upper Most Concrete Retaining Walls at the North Park (only lower wall included)*
- l. *Temporary Access Roads for Emergency Use Vehicles*

Please know that we are committed to the total success of this project and look forward to continuing our relationship with the City of Newport Beach and the Design Teams.

Sincerely,



Bruce Curry
Project Executive

C: Darren Mann, CWD
 Andy Feth, CWD
 Robert Shafer, CWD
 William Hahn, CWD

Attachments:

- ⇒ Mass Excavation Drawing List
- ⇒ Mass Excavation Phase I Trade Package Summary
- ⇒ Basic Services GCM List
- ⇒ Basic Services Labor Matrix
- ⇒ Construction Schedule
- ⇒ Project Rate Sheet

EXHIBIT "A"
BULLETIN #1
 CONTRACT DOCUMENT LISTING
 NEWPORT BEACH CITY HALL AND PARK PROJECT
 APRIL 7th, 2010
 VERSION 1.1

THE LISTING BELOW COMPRISES ALL OF THE DOCUMENTS INCLUDED UNDER THIS CONTRACT. UNLESS OTHERWISE NOTED, ALL DOCUMENTS ARE AS PREPARED BY BOHLIN, CYWINSKI, JACKSON.

DRAWINGS

ITEM #	SHEET	PREPARED BY	ORIGINAL ISSUE DATE	LATEST REV DATE
001	CSI	Bohlin, Cywinski, Jackson		3/31/2010
002	MX01.01	ARUP		3/17/2010
003	MX01.02	ARUP		3/17/2010
004	MX01.03	ARUP		3/17/2010
005	04 of 38	Hall & Foreman, Inc.		9/23/2009
006	05 of 38	Hall & Foreman, Inc.		8/27/2009
007	06 of 38	Hall & Foreman, Inc.		8/27/2009
008	07 of 38	Hall & Foreman, Inc.		8/27/2009
009	08 of 38	Hall & Foreman, Inc.		8/27/2009
010	MX03.01	ARUP		3/17/2010
011	MX03.02	ARUP		3/17/2010
012	MX03.03	ARUP		3/17/2010
012	MX03.03	ARUP		3/31/2010
013	MX03.04	ARUP		3/17/2010
014	MX04.01	ARUP		3/17/2010
015	MX04.02	ARUP		4/6/2010
016	MX04.03	ARUP		4/6/2010
017	MX04.04	ARUP		3/17/2010
018	MX04.05	ARUP		3/17/2010
019	MX04.06	ARUP		3/17/2010
020	MX04.07	ARUP		3/17/2010
021	MX04.08	ARUP		3/17/2010
022	MX04.09	ARUP		3/17/2010
023	MX04.10	ARUP		3/17/2010
024	MX05.01	ARUP		3/17/2010
025	MX06.01	ARUP		3/31/2010
026	MX06.02	ARUP		3/31/2010
027	MX06.03	ARUP		3/31/2010
028	MX06.04	ARUP		3/17/2010
029	MX06.05	ARUP		3/17/2010
030	MX06.06	ARUP		3/17/2010

EXHIBIT "A"
BULLETIN #1
CONTRACT DOCUMENT LISTING
PAGE 2 OF 2

ITEM #	SHEET	PREPARED BY	ORIGINAL ISSUE DATE	LATEST REV DATE
031	MX06.07	ARUP		3/17/2010
032	MX06.08	ARUP		3/31/2010
033	MX06.09	ARUP		3/31/2010
034	MX06.10	ARUP		3/31/2010
035	MX06.11	ARUP		3/17/2010
036	MX06.12	ARUP		3/17/2010
037	MX06.13	ARUP		3/17/2010
038	MX06.14	ARUP		3/17/2010
039	MX06.15	ARUP		3/17/2010
040	MX06.16	ARUP		3/17/2010
041	MX06.17	ARUP		3/17/2010
042	MX07.01	ARUP		3/17/2010
043	MX07.02	ARUP		3/17/2010
044	MX07.03	ARUP		3/17/2010
045	MX07.04	ARUP		3/17/2010
046	MX07.05	ARUP		3/17/2010
047	MX07.06	ARUP		3/17/2010
048	MX07.07	ARUP		3/17/2010
049	MX07.08	ARUP		3/17/2010
050	MX08.01	ARUP		3/17/2010
051	MX08.02	ARUP		3/17/2010
052	MX08.03	ARUP		3/17/2010
053	MX08.04	ARUP		3/17/2010
054	MX08.05	ARUP		3/17/2010
055	MX08.06	ARUP		3/17/2010

SPECIFICATION MANUAL

Project Specification Manual prepared by Bohlin, Cywinski, Jackson dated March 17, 2010 entitled Mass Excavations Bid Set divisions 1 through 3 inclusive.

SOILS REPORT

Soils Report prepared by Leighton Consulting, Inc dated April 2, 2010 entitled Geotechnical Engineering Exploration Report for the Newport Beach Civic Center and Park, City of Newport Beach, California.

BULLETIN

Bulletin Prepared by Bohlin, Cywinski, Jackson as follows:
Bulletin Number #1 dated March 31, 2010

EXHIBIT - A

C.W.Driver
BUILDERS SINCE 1919

Mass Excavation
C. W. DRIVER
Budget Summary
04/19/10

Newport Beach Civic Center and Park
Newport Beach, CA

Printed: 20-Apr-10
Date Prepared: 20-Apr-10
Estimate No.: #87101
Square Feet: 122,295
Months On-Site: 25.0
Includes Addenda: N/A
Estimator: RDS,
RG,BF,TF,VR

* Spec No	Seq	Description	Notes	Mass Ex	Percent	Cost per Sqft
01 73 00	6	Surveying		99,100		
01 50 00	7	Site Specific Requirements		66,380		
01 50 00	8	Temp. Barricades & Chain link Fencing		84,866		
01 50 00	10	Temp Facilities and Controls		41,330		
	11	Construction & Final Clean-Up		26,004		
02 41 13	13	Selective Structure Demolition	incl in earthwork			
01 74 19	14	Construction waste management and disposal		2,849		
31 00 00	15	Site Preparation/ Earthwork		3,366,992		
	16	Temp Dewatering		12,387		
31 50 10	17	Earth Shores & Underpin		1,711,799		
31 25 00	19	Erosion Control		34,166		
32 12 16	20	Asphaltic Paving		15,207		
03 33 13	23	Site Walls		140,265		
33 41 00	30	Drainage		234,947		
06 61 00	32	Wrought Iron / RFP Fencing		23,596		
03 37 13	37	Gunite & Shotcrete	incl in earth shoring			
07 11 16	50	Waterproofing		363,795		
01 32 33	109	Time Lapse Photography		4,627		
END CSI LIS	116	End Csi Listing				
****End Of Summary - Do Not Erase****						
SUBTOTAL				6,228,309		
XTR-01000-1	117	Construction Contingency	8.00%	498,265		
Total Estimate				6,726,574		

Mass Excavation
C. W. DRIVER
Summary
04/19/10

Newport Beach Civic Center and Park
Newport Beach, CA

Printed: 20-Apr-10
Estimate No.: #87101
Square Feet: 122,295
Months On-Site: 25.0
Includes Addenda: N/A
Estimator: RDS,
RG,BF,TF,VR

* Spec No	Seq	Description	Notes	Mass Ex	Percent	Cost per Sqft
XTR-01001-I	118	Escalation				
DRM-00615-I	119	Sub Bonds				
000-01030-M	120	Preconstruction				
000-01000-M	121	General Conditions				
DRM-00650-I	122	Permits & Special Insur.				
GCM-01659-	123	Data Processing	0.25%			
DRM-00653-I	124	Liability Insurance				
AAA-01000-I	125	Overhead & Fee	3.25%			
DRM-00610-I	126	Prime Bond	0.57%			
Total Estimate				6,726,574		

SCOPE AND PRICING SHEETS

04/07/10

20-Apr-10

* Budget#	Description/Scope of Work	Quantity	Unit	Cost/Unit	Total
*	<u>Alternates</u>				
	Grand Total LEED Enhanced Commission				
	5 Hazardous Materials Mitigation				
	in soft costs, if required				
*	<u>Alternates</u>				
	Grand Total Hazardous Materials Mitigati				
0173.00	6 Surveying				
	Mass Ex				
	Layout and monitoring for soil harvesting, site mass excavation and export	240.0	cwhr	215.00	51,600
	Layout for the shoring wall	80.0	cwhr	215.00	17,200
	Shoring monitoring	120.0	cwhr	215.00	25,800
	Provide as-built drawings	1.0	Isum	4,500	4,500
					99,100
*	<u>Alternates</u>				
	Grand Total Surveying				
					99,100

SCOPE AND PRICING SHEETS

04/07/10

20-Apr-10

[illegible]

SCOPE AND PRICING SHEETS

04/07/10

20-Apr-10

* Budget#	Description/Scope of Work	Quantity	Unit	Cost/Unit	Total
*	<u>Alternates</u>				
Grand Total Security					
* 01-50-00	10 Temp Facilities and Controls				
	Mass Ex				
	Set temporary poles	4.0	each	150.00	600
	Power poles hook up	40.0	each	250.00	10,000
	Set subfeed panels	2.0	each	125.00	250
	Temp utilities hook up	1.0	lsum	16,000.00	16,000
	Rent temporary generator	7.0	mnth	1,500.00	10,500
	Rent power poles for the entire project	6.0	mnth	80.00	480
	Mat/Equip Protection	1.0	lsum	3,500.00	3,500
					41,330
*	<u>Alternates</u>				
Grand Total Temp Facilities and Controls					41,330
11 Construction & Final Clean-Up					
	Mass Ex				
	Continuous clean up and support	6.0	mnth	3,363.06	20,178
	Final clean up	120.0	mnhr	48.54	5,825
					26,004
*	<u>Alternates</u>				

SCOPE AND PRICING SHEETS

04/07/10

20-Apr-10

[illegible]

12 Tests and Inspection

[illegible]

01 74 19	14 Construction waste management and disposal
----------	---

Mass Ex				
Extra labor to sort through duration of the project- Recycle	120.0	mnhr	23.74	2,849
				2,849
* Alternates				
Grand Total Construction waste manager				2,849

31 00 00	5 Site Preparation/Earthwork
----------	------------------------------

	Mass Ex			
	Sub Contractor proposal	1.0	1sum	2,992,289
				2,992,289
	Additional dirt removal -per changes in drawings	20,000.0	cuyds	7.07
				141,400
	Potholing	1.0	1sum	15,180.00
				15,180
	Site clearing and grubbing		included	

SCOPE AND PRICING SHEETS

04/07/10

20-Apr-10

[illegible]

SCOPE AND PRICING SHEETS

04/07/10

20-Apr-10

* Budget#	Description/Scope of Work	Quantity	Unit	Cost/Unit	Total
	Mass Ex				
	Allowance	32.0	points	387.10	12,387
					12,387
* Alternates					
Grand Total Temp Dewatering					12,387

31-50-10 17 Earth Shores & Underpin					
Mass Ex					
	Subcontractor Proposal	1.0	Isum	1,683,000	1,683,000
	Shoring wall at the MacArthur / parking garage				
	Engineering design of soldier pile wall			included	
	Coal tar epoxy-coated soldier piles			included	
	Double corrosion protected (DCP) tieback anchors			included	
	Wood Lagging to 4 feet below Top of Finished Slab			included	
	Nelson studs welded to soldier piles			included	
	Temporary cable handrail at top of soldier piles	613.0	Inft	45.00	27,585
	Remove cable handrail	613.0	Inft	1.98	1,214
					1,711,799
*	<u>Alternates</u>				
Grand Total Earth Shores & Underpin					1,711,799

SCOPE AND PRICING SHEETS

04/07/10

20-Apr-10

[illegible]

SCOPE AND PRICING SHEETS

04/07/10

20-Apr-10

[illegible]

03 33 13 23 Site Walls				
Mass Ex				
North Park				
Subcontractor proposal	1.0	Isum	97,077.00	97,077
Retaining wall, type A (next to pedestrian walk) -done during Mass EX	366.0	lnft		
Footing			included	
Footing rebar			included	
CIP Wall			included	
Wall rebar			included	
Subdrainage perforated pipe surrounded by drainrock and wrapped in geotextile fabric	366.0	lnft	42.00	15,372
Wall height correction from designer	732.0	sqft	38.00	27,816
				140,265
* Alternates				
Grand Total Site Walls				140,265

33.41.00	30 Drainage			
	Mass Ex			
	Subcontractor proposal	1.0	1sum	234,947.00
	Install cleanout			234,947
			included	

SCOPE AND PRICING SHEETS

04/07/10

20-Apr-10

* Budget#	Description/Scope of Work	Quantity	Unit	Cost/Unit	Total
	SD manhole			included	
	18" SD			included	
	6" Solid subdrain			included	
	6" Perforated subdrain			included	
	CMP riser			included	
	Connect to (E) SD			included	
	18" x 18" Tee			included	
	Connect to (E) SDMH			included	
	Connect to (E) catch basin			included	
	Headwall w/ rip rap			included	
					234,947
	<u>Alternates</u>				
	Grand Total Drainage				234,947
06 51 00	32 Wrought Iron / REP Fencing				
	Mass Ex				
	Fence at the retaining wall	133.0	lnft	177.42	23,596
					23,596
	<u>Alternates</u>				
	Grand Total Wrought Iron / I				23,596
07 11 15	50 Waterproofing				
	Mass Ex				
	Waterproofing at the shoring wall	22,000.0	sqft	9.60	211,176
	Add for 2 layers of cement board	22,000.0	sqft	3.04	66,911

Mass Excavation and Haul off

Project: NPBCC

SUBCONTRACTOR COMPARISON SPREADSHEET

C.W. Driver
BUILDERS SINCE 1919

Prepared By: Rimma Gutnik

Printed:

4/23/10 1:23 PM

Date: 21-Apr-10

NO.	Description/Scope of Work	Earth Construction & Mining Charles Foss (714) 897-4326	Crew Inc Vince Olson (323) 864-1003	Selco Co., Inc. Tim Hamchuk (949) 654-4600 15	Southern California Grading Kurt Cutler (949) 551-6655	Sharma Contractors Vipul Patel (562) 693-3495	Doja, Inc. Alden Arcos (909) 628-1999 113	Tucker Nathan Stanley (949) 241-8590	Western Rim Constructors, Inc. Debbie Ivors (760) 489-4328	Malcolm Drilling Co., Inc. Pete Speler (626) 338-0035
1	BASE BID	2,557,000	2,790,000	2,922,289	3,322,000	2,974,238	3,149,000	combined package	combined package	combined package
2	Prequalified for Earthwork	yes	yes	yes	yes	yes	yes	yes	disqualified	disqualified
3	Prequalified for Shoring Wall (for combined packages)	yes	yes	yes	yes	yes	yes	no	disqualified	disqualified
4	CA License current	yes	yes	yes	yes	yes	yes			
5	Per Plans and Specs	yes	yes	yes	yes	yes	yes			
6	Acknowledge Addendum	yes	yes	yes	yes	yes	yes			
7	Bid bond included	yes	yes	yes	yes	yes	yes			
8	Prevailing Wage	yes	yes	yes	yes	yes	yes			
9	Compliance with Project Schedule	yes	yes	yes	yes	yes	yes			
10	Listed subs	no	no	yes	no	yes	no			
11	Insurance complies with CWD requirements	yes	yes	yes	yes	yes	yes			
12										
13										
14	Potential value engineering			(194,650)						
15										
16										
	Subcontractor Contract	2,557,000	2,790,000	2,727,639	3,322,000	2,974,238	3,149,000	0	0	0

ALTERNATES	ALTERNATE AMOUNT	ALTERNATE AMOUNT	ALTERNATE AMOUNT	ALTERNATE AMOUNT	ALTERNATE AMOUNT	ALTERNATE AMOUNT	ALTERNATE AMOUNT	ALTERNATE AMOUNT	ALTERNATE AMOUNT	ALTERNATE AMOUNT
Price per cy yard multiplied by 10,000	\$ 7.50	75,000	\$ 8.00	80,000	\$ 7.00	70,000	\$ 8.20	82,000	\$ 7.78	77,800
Extra 3' under parking structure		20,790		20,000		no charge				
Total Alternate Amount		95,790		100,000		70,000		82,000		77,800
Subcontractor Contract		2,652,790		2,890,000		2,797,639		3,404,000		3,052,038
Amount (with Alternates)										